

REMARKS

The final Office Action dated April 3, 2005, has been carefully considered. Claims 1-52 are presented for examination in this application, of which Claims 1, 9, 10, 11, 19-21, 29-31, 39 and 40 are independent. The independent claims have been amended to define still more clearly what Applicant regards as his invention. In addition, Claims 7, 17, 27 and 37 have been amended to clarify the field to which they apply. Claims 41-52 have been added to define more clearly a particular set of embodiments, and to assure Applicant of a full measure of protection. Favorable reconsideration is requested.

In the Office Action, Claims 1-6, 9, 11-16, 19, 21-26, 29, 31-36 and 39 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,563,796 (*Saito*); Claims 7, 17, 27 and 37 were rejected under 35 U.S.C. § 103(a) as being obvious from *Saito* in view of U.S. Patent 6,621,805 (*Kondylis et al.*); Claims 8, 18, 28 and 38 were rejected under Section 103(a) as being obvious from *Saito* in view of U.S. Patent 5,867,495 (*Elliot et al.*); and Claims 10, 20, 30, and 40 were rejected under Section 103(a) as being obvious from *Saito* in view of U.S. Patent 5,581,544 (*Hamada et al.*).

After a careful consideration of the outstanding Office Action and the prior art, Applicant finds that he cannot agree with the propriety of the rejections. The foregoing amendments are presented to clarify still further at least one feature that is believed clearly not to be taught or suggested by the prior art, as follows.

Saito relates to a passive method of evaluating a network. Several figures illustrate the relationship between the evaluation apparatus and the network, and they all show one-way communication. For example, in Fig. 1, "the evaluation apparatus 211

monitors [traffic]... by splitting the packets passing through the line 109 using an optical splitting device.” (Col. 6, lines 21-25.) Thus, the evaluation apparatus only receives data from the network or service. In contrast, the present independent claims are all directed to arrangements in which a management apparatus both transmits data to and receives data from a service. For example, in Fig. 13, step S16 involves writing test data to the service. This two-way communication is used as a technique by which the apparatus manages the services by actively testing them. In contrast, *Saito* uses one-way communication, so that “cells flowing in line 109 will continue to flow unabated.” (Col. 7, lines 1-4.) Thus, it appears to Applicant that *Saito* actually teaches away from using two-way communication.

Applicant notes the Examiner’s reference to an additional embodiment in *Saito* that provides a method of simulating a network. As Applicant understands *Saito*, however, this method still uses a CPU separate from the network. The patent describes patents “duplicated and monitored” (col. 14, line 17) being used “for obtaining statistical details for generating additional traffic.” (col. 14, lines 32-33.) As far as Applicant can see, nothing in *Saito* would suggest placing this additional traffic back on the network. Rather, the additional traffic is used only for “reproducing the traffic in lines 1008, 1009 and simulating the system 1001.” (Col. 14, lines 50-51.) In addition, Fig. 13, which relates to this embodiment, shows another optical splitter, 1017, as the only point of connection between the evaluation apparatus, 1018, and lines 1008 and 1009. *Saito* states that an optical splitter has the property of permitting “cells flowing in line... to flow unabated” (col. 7, lines 3 and 4). Thus, the additional embodiment cited in the Office Action also appears not to use or suggest two-way communication.

Independent Claims 1, 9-11, 19-21, 29-31, 39 and 40 each recite that “test means” (or a corresponding step, or code) “sends data to the service” during a “trial use”. Applicant submits that this feature is not in any way suggested by anything found in *Saito*, for at least the reasons just discussed.

Claims 10, 20, 30 and 40, rejected as being obvious from *Saito* in light of *Hamada*, each recite “send[ing] data to the service”, thus again calling for two-way communication as with the claims discussed above. The feature of two-way communication, however, as Applicant has argued above, is not seen to be taught or suggested by anything in *Saito*, nor does *Hamada* remedy this deficiency, even assuming *Hamada* shows all that it is cited for.

Moreover, though, Applicant submits that *Hamada* actually does not teach or suggest substitution of a service, as is asserted in the Office Action. Even if *Hamada* states that “initial value dL0 is substituted” (col. 12, line 10), it does not appear even to suggest the value dL0 is a service. In fact, it is clear from *Hamada* that that value is a “buffer amount”, (col. 11, line 60).

For all these reasons, it is believed to be plain that Claims 10, 20, 30 and 40 are allowable over *Saito* and *Hamada*, even assuming that the proposed combination (or any other combination) thereof would be a proper one.

A review of the other art of record has failed to reveal anything which, in Applicant’s opinion, would remedy the deficiencies of the art discussed above, as references against the independent claims herein. Those claims are therefore believed patentable over the art of record.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual consideration or reconsideration, as the case may be, of the patentability of each on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Applicant's undersigned attorney may be reached in our New York Office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address listed below.

Respectfully submitted,



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